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C O N F I D E N T I A L SECTION 01 OF 03 ISLAMABAD 001900

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SUBJECT: ZARDARI TO REFORM FATA GOVERNANCE

Classified By: Anne W. Patterson for reasons 1.4 (b), (d).

¶1. (C) Summary: At midnight on August 14, Pakistani Independence Day, President Zardari plans to unveil a reform package significantly changing the Frontier Crimes Regulation (FCR) and extending the Political Parties Act. Zardari's new ordinance will remove some of the draconian aspects of the FCR's convictions and punishments for FATA residents, additionally it will expand the Political Parties Act into the FATA, allowing political parties to openly campaign in the FATA. This announcement comes after several high-level meetings where both Zardari and Prime Minister Gilani consulted with stakeholders on political reforms in the FATA. These changes will significantly change both the judicial and political systems in the FATA for the first time in over 100 years, and Zardari hopes the new laws will address the grievances of many FATA residents. End summary.

¶2. (SBU) Leading up to Zardari's reform package, in March 2008 Gilani formed a Cabinet Committee to investigate FCR reform. The Committee compiled a report of suggested changes to the law that included consultations with a cross section of tribal representatives from all FATA agencies. Additionally, hundreds of tribesmen took part in three GOP-sponsored workshops to discuss necessary changes in the FCR. The final recommendations were considered by senior federal ministers, provincial officials, and FATA parliamentarians. The stakeholders reported to Zardari that the FCR was an anachronistic law that needed amendment to reflect "the wishes of the people of tribal areas and to protect their basic rights while maintaining local traditions." In keeping with the recommendations, Zardari will unveil a reform package at midnight on August 14, Pakistani independence day. Under the Pakistani constitution, FATA is a matter of federal jurisdiction and it is for the President to make laws that apply in the FATA. No act of the National Assembly or Supreme Court applies in the FATA without the specific order of the President. The proposed changes will not affect the political administration system of the FATA or the NWFP Governor directly.

¶3. (C) In an August 13 meeting with Poloff, FATA Parliamentary leader, Munir Khan Orakzai, shared the details of the reform package. Orakzai participated in the FCR meetings with Gilani and Zardari, and was heartened that a Pakistani government was finally doing something about the draconian law. He told Poloff that it was the first time in over 100 years that a government was seriously changing the governance system of the FATA, and though it may not solve all the problems it was a step in the right direction. Orakzai and other FATA parliamentarians had advised against

removing the FCR completely, because it was too drastic a step that would leave a vacuum in the tribal areas. In the vacuum, Orakzai predicted there would be anarchy and then a push for Shariah law. Instead, Zardari's approach was to reform the most egregious parts of the FCR, and then wait and evaluate further reforms in the future. Orakzai was also vehement that FATA residents did not/not want to be absorbed into the North-West Frontier Province (NWFP) or have the Pakistani Constitution and Penal Code extended into the FATA.

Many FATA parliamentarians have shared the view with Post that the FATA residents did not want the "Punjabi" system and were happy with the benefits of FATA's distinct tribal nature, such as the jirga process.

¶4. (C) Zardari's reform plan would change the collective responsibility clause of the FCR, but not remove it completely. Significant changes include:

¶A. In the new system, a violator's male family members between the ages of 16 and 65 could be held responsible for their relative's crime. This change moved collective responsibility to just the "plarina" (family) rather than the whole tribe, and also limited the age of those held responsible.

¶B. Razing houses for crimes would be replaced with the confiscation of houses. This would allow the suspect to repent or be proven innocent and then reclaim his house.

¶C. Extra-judicial custody would now be prohibited. For any accused FATA resident, law enforcement authorities would have to submit written charges, and the suspect would

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have to be produced in court within 24 hours. Detention exceeding 24 hours would have to be justified in court. The political agent's or the assistant political agent's offices would continue to act as district magistrates, and thus courts.

¶D. In disputes, the two parties would now nominate who forms the jirga to resolve their dispute, rather than the political agent, as was the case previously. In cases where the parties fail to nominate a mutually acceptable jirga, the political agent would then nominate one.

¶E. There would now be a provision for reasonable bail on most offenses.

¶F. The reform package introduces a new FATA Appellate Tribunal based in Peshawar, where tribesmen would have the right to appeal the decisions of the political administration. The FCR did not have any right to appeal. The tribunal would be made up of persons with the qualifications of a High Court judge, but not sitting judges. The Governor would appoint members of the tribunal but would not have the power to remove them at will.

¶5. (C) Besides changes to the FCR, Zardari's reform package would now extend the political parties act to the FATA. Previously, no political parties were allowed to campaign or even hold public meetings in the FATA. Secular parties complain that under the current system, only the religious parties have an advantage because they control mosque pulpits. Also the lack of political parties undermined the efficacy of FATA parliamentarians by not allowing them to join coalitions or influence party dynamics nationally. For the first time in Pakistan's history, all political parties will now be free to be active in the FATA.

¶6. (C) While many FATA stakeholders are lauding Zardari's new reforms, Awami National Party (ANP) leader Asfandiyar Wali Khan denounced the plan as being foisted upon his party without consultation. The ANP has advocated that the FATA become part of the NWFP, thus expanding the control of his party into the tribal areas. Pakistan People's Party (PPP) NWFP leader Rahimdad Khan told Post that the pending

announcement by Zardari of his proposed modifications to the FCR is an attempt to get out in front of the competing proposals made by ANP and Pakistan Muslim League-Nawaz (PML-N). Khan expects the modalities to then be negotiated between the parties. According to Orakzai, the reform package was also a compromise with the Army who wanted to maintain certain portions of the FCR that helped to fight militants.

#### Background of FCR

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17. (SBU) The FCR is a holdover from British colonial law and was established in 1901 and has largely remained unchanged for the last 108 years. FCR reform was discussed for the first time during Musharraf's regime and he set up a committee to survey FATA residents in each agency and then compile a list of recommended changes to the law. There have been some changes in the past to the FATA governance structure, including the 1973 constitution's expansion of parliamentary representation resulting in FATA having 12 MNAs and 8 Senators. In 1997, adult suffrage was introduced for the first time in the FATA, before this date only Maliks had the right to vote in National Assembly elections.

18. (SBU) The FCR provided for arbitration by jirgas to settle disputes through customary tribal methods. The actual conviction or acquittal could not be appealed, and the implementation of the jirga decision was in the hands of the political administration of the agency headed by the political agent. One of the most hated portions of the FCR was the concept of collective responsibility which gives the political agent vast power to punish whole tribes for non-cooperation or violation of the FCR. Other draconian punishments within the FCR included destruction of tribal and personal property as part of collective punishment.

19. (C) Comment: Collective punishment and lack of political parties are the two main complaints of many FATA leaders and

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residents in terms of governance of the tribal areas. Finding agreement on the reform has been a larger challenge, however, Zardari's proposed package takes into account the views of many stakeholders and also does not leave a dangerous governance vacuum in FATA. Making any change in the FATA is a significant step, and it is clear that FATA residents enjoy their separate status but want protection from oppressive punishments. The proposed changes will be a good opening for guaranteeing more legal rights and due process to FATA residents, without getting rid of the jirga process. The reforms to the FCR open the door for further changes, as the needs of the FATA are more apparent. Ultimately, reforming the governance structure in the FATA can lead to more stability and prosperity, both conditions that deny space for extremists and militants. End comment.  
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